§ 895.25 Labeling.

(a) If the Commissioner determines that the substantial deception or unreasonable and substantial risk of illness or injury or the unreasonable, direct, and substantial danger to the health of individuals presented by a device can be corrected or eliminated by labeling or a change in labeling, or change in advertising if the device is a restricted device, the Commissioner will provide written notice to the manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device specifying:

(1) The deception or risk of illness or injury or the danger to the health of individuals,

(2) The labeling or change in labeling, or change in advertising if the device is a restricted device, necessary to correct the deception or eliminate or reduce such risk or danger, and

(3) The period of time within which the labeling, change in labeling, or change in advertising must be accomplished.

(b) In specifying the labeling or change in labeling or change in advertising to correct the deception or to eliminate or reduce the risk of illness or injury or the danger to the health of individuals, the Commissioner may require the manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device to include in labeling for the device, and in advertising if the device is a restricted device, a statement, notice, or warning. Such statement, notice, or warning shall be in the manner and form prescribed by the Commissioner and shall identify the deception or risk of illness or injury or the unreasonable, direct, and substantial danger to the health of individuals associated with the device as previously labeled. Such statement, notice, or warning shall be used in the labeling and advertising of the device for a time period specified by the Commissioner on the basis of the degree of deception, risk of illness or injury, or danger to health; the frequency of sale of the device; the length of time the device has been on the market; the intended uses of the device; the method of its use; and any other factors that the Commissioner considers pertinent.

(c) The Commissioner will allow a manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device a reasonable time, considering the deception or risk of illness or injury or the danger to the health of individuals presented by the device, within which to accomplish the required labeling, change in labeling, and, if the device is a restricted device, any change in advertising. The Commissioner may, however, request that no additional devices be introduced into commerce until the labeling or change in labeling, or change in advertising is accomplished by the manufacturer, distributor, importer, or other person(s) responsible for the labeling or advertising of the device.

(d) If such voluntary action is not taken, the Commissioner may take action under other sections of the act to prevent the introduction of the devices into commerce. The Commissioner may consider the failure of a manufacturer, distributor, importer, or any other person(s) responsible for the labeling or advertising of the device to accomplish the required labeling or change in labeling, or change in advertising in accordance with this section as a basis for initiating a proceeding to make a device a banned device in accordance with § 895.21(d) and when appropriate to establish a special effective date in accordance with § 895.30.

§ 895.30 Special effective date.

(a) The Commissioner may declare a proposed regulation under § 895.21(d) to be effective upon its publication in the FEDERAL REGISTER and until the effective date of any final action taken respecting the regulation if:

(1) The Commissioner determines, on the basis of all available data and information, that the deception or risk of illness or injury associated with use of the device that is subject to the regulation presents an unreasonable, direct, and substantial danger to the health of individuals, and

(2) Before the date of the publication of such regulation, the Commissioner notifies the domestic manufacturer and importer, if any, of the device that the